

## **REMARKS**

In an office action dated 13 January 2010, claims 63-66, 69-72, 87-88 are rejected on prior art grounds and claims 67-68 are objected to. Claims 43-62 remain withdrawn.

In reply, Applicant herein cancels claims 43-62, 69, and 73-86 and amends claims 63, 66-68, and 87. These amendments, taken together with the present remarks, address and overcome the outstanding objections and rejections. Now, the Examiner's various objections and rejections are addressed in turn.

### **1. Objections**

Claims 67 and 68 are objected to as being dependent upon a rejected base claim, but are indicated as being allowable if amended to include all of the provisions of the respective base and intervening claims.

In response, Applicant hereby amends Claims 67 and 68 to be written in independent form including the limitations of the previous base Claim 63 and intervening Claim 66.

Applicant notes that the term "resilient material" has been substituted in amended claims 67 and 68 for the following terminology in previous intervening claim 66: "material selected from the group comprising rubbers, elastomers, flexible plastics, said pad or disc". This substituted terminology does not constitute new matter as support is found throughout the original disclosure, for example, at page 21, lines 9-10. Further, more the substituted terminology does not effect the novelty or non-obviousness of independent claims 67 and 68.

According, in view of the Examiner's indication of allowable subject matter and in view of the present amendment, Applicant believes that the newly amended Claims 67-68 are now allowable; reconsideration and withdrawal of the outstanding objection is respectfully requested.

## 2. Rejections under 35 U.S.C. 102

Claims 63-65 and 69 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,711,988 to Eugster. As will now be discussed, independent Claim 63, as herein revised, includes limitations not taught or suggested by Eugster. Thus, the rejection of this claim under 102(e) is improper and should be withdrawn.

Claim 63, as currently amended includes limitations from dependent Claims 66 and 69. Correspondingly, claim 66 is modified and claim 69 is cancelled. More specifically, claim 63 is herein modified to include, *inter alia*, a “valve means comprising a pad or disc of a resilient material comprising a through slit that is normally closed, for insulating the internal volume of said cartridge from external environment and for retaining fluid residuals inside said internal volume when said beverage extraction has been terminated” and “said cup port comprising fluid flow hurdles formed on its internal surface or mounted herein, for breaking direct fluid flow passing through said cup port”.

At least the quoted portions of revised claim 63 are not found in the Eugster reference. As shown in Figure 1 of the reference, Eugster teaches a frothing valve 7. However, the valve 7 is not in the form of a pad or a disc nor is it composed of resilient material nor does the frothing valve include a through slit, all as required by Applicant’s claim 63. Therefore, for at least these reasons, amended Claim 63 is novel over Eugster. Reconsideration and withdrawal of the relevant Section 102 rejection is respectfully requested.

Claims 64-65 variously depend from novel claim 63 and are correspondingly novel. Reconsideration and withdrawal of the relevant Section 102 rejections are therefore respectfully requested.

As mentioned, claim 69 is herein canceled.

Accordingly, all of the novelty rejections are herein addressed and overcome; withdrawal thereof is respectfully requested.

### 3. Rejections under 35 U.S.C. 103

Claim 66 is rejected under 35 U.S.C. 103(a) as being obvious over Eugster in view of US 5,127,318 to Selby III (hereinafter “Selby”). Here, the Examiner contends that Selby allegedly teaches the use of a pad 54 of elastic material as an openable valve member in a beverage brewing container. See Office Action page 3 and Selby Figures 4-5. The Examiner concludes that this pad 54 of Selby is equivalent to the “pad or disc” as recited in Applicant’s Claim 66.

As discussed above, this quoted element of claim 66 is herein deleted from claim 66 and inserted into independent claim 63. Thus the present rejection of claim 66 is rendered moot.

Furthermore, Applicant respectfully submits that neither Eugster nor Selby teach or suggest “valve means comprising a pad or a disc or a resilient material comprising a through slit that is normally closed...”, as presently recited in independent claim 63.

To the contrary, the pad 54 of Selby includes a central opening that is always open. The valve in Selby is actually provided by the spring washers 61-63 acting on a piston 55 engaged upon the pad 54. See, e.g., Selby Col. 6 Ln. 52-58 and Figure 4. This is unlike the valve in Applicant’s Claim 63 where the valve means itself comprises a pad or disc of resilient material comprising a through slit that is normally closed. The spring loaded piston of Selby is far more cumbersome and less efficient than the Applicant’s claimed valve. Therefore, Eugster and Selby do not teach or suggest the above-discussed limitations of amended claim 63. Accordingly, for at least these reasons, the claim is non-obvious with respect to the Selby and Eugster references.

In addition, none of the relied upon references provide or suggest to one of ordinary skill in the art the Applicant’s limitation “said cup port comprising fluid flow hurdles formed on its internal surface or mounted therein, for breaking direct fluid flow passing through said cup port” as set forth in the currently amended Claim 63. Thus, for this additional reason, the claim is non-obvious.

Accordingly, as set forth above, the outstanding section 103 rejection of claim 66 is herein rendered moot and the currently amended claim 66 is novel and non-obvious over Eugster and Selby.

The Examiner further rejects Claims 63, 64, 87 and 88 under 35 U.S.C. 103(a) as being obvious over US 6,832,542 to Hu in view of US 6,948,420 to Kirschner.

Applicant's Claim 63, as currently amended, recites "valve means comprising a pad or disc of a resilient material comprising a through slit that is normally closed, for insulating the internal volume of said cartridge from external environment and for retaining fluid residuals inside said internal volume when said beverage extraction has been terminated" and "said cup port comprising fluid flow hurdles formed on its internal surface or mounted herein, for breaking direct fluid flow passing through said cup port". At least these limitations are not taught or suggested in Hu or Kirschner. Hence, Claim 63 is not obvious over these references. Therefore, reconsideration and withdrawal of all of the relevant Section 103 rejections is respectfully requested. Claim 63 is not further rejected and is thus allowable to Applicant

Claims 64, 87 and 88 all variously depend from allowable Claim 63 and are consequently allowable. Reconsideration and withdrawal of the relevant Section 103 rejections are respectfully requested.

Finally, claims 70-72 are rejected in the Office Action under 35 U.S.C. 103(a) as allegedly being obvious in view of Eugster as combined with US 6,740,345 to Cai. These claims variously depend from allowable claim 63 and are thus correspondingly allowable; reconsideration and withdrawal of the relevant obviousness rejection is respectfully requested.

#### 4. Conclusion

Upon entry of the present submission, claims 63-68, 70-72, 87, and 88 will remain. The Examiner has indicated that claims 67 and 68 include allowable subject matter. These claims are herein placed into independent form and are now allowable. Claim 63 is herein revised to include limitations which are not taught or suggested by the

relied upon references. Accordingly, claim 63 is allowable. Claims 64-66, 70-72, 87, and 88 all variously depend from allowable claim 63 and are thus correspondingly allowable. Accordingly, the application is now in condition for allowance; prompt issuance of a Notice of Allowance is requested.

If there are any additional charges with respect to this submission, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys. Applicant hereby petitions under 37 C.F.R. §1.136 for any extension of time necessary for entry and consideration of the present submission. The Examiner is invited to contact Applicant's attorneys at the below-indicated telephone number regarding this submission or otherwise concerning the present application.

Respectfully submitted,  
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Date: 13 July 2010